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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 957

FRENCH LINE, (the trade name of Compagnie Generale Transatlantique),
Petitioner,

vs.

THE NEW ZEALAND INSURANCE COMPANY, LTD.,
Respondent.

Petition for a Writ of Certiorari

to the District Court of Appeal of the State of California
in and for the First Appellate District

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BORG PRINTING COMPANY OF CALIFORNIA, 180 FIRST STREET, SAN FRANCISCO 5

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vs.

THE NEW ZEALAND INSURANCE COMPANY, LTD.,
Respondent.

Petition for a Writ of Certiorari

to the District Court of Appeal of the State of California in and for the First Appellate District

Petitioner French Line (Compagnie Generale Transatlantique) prays that a writ of certiorari issue to review the order of the District Court of Appeal of the State of California, First Appellate District, rendered in the above-entitled case on January 24, 1963. No opinions were delivered by the courts below.

JURISDICTION

The jurisdiction of this court is invoked under 28 U.S.C. § 1257 (3) to review the order of the California District

Court of Appeal, First Appellate District, made and entered on January 24, 1963, denying petition for issuance of a writ of mandate to require the San Francisco Superior Court to dismiss respondent's complaint. A timely petition for hearing by the California Supreme Court filed February 4, 1963 was denied February 20, 1963.

QUESTIONS PRESENTED

I

Is the doctrine of *forum non conveniens* as administered by the admiralty courts a part of the federal maritime law that must be applied by state courts in maritime cases?

II

If so, did the California courts abuse their discretion in retaining jurisdiction of a suit by an alien underwriter against an alien ocean carrier for claimed damage to cargo shipped to an alien in Guatemala from an alien in Belgium?

STATEMENT OF THE CASE

In May and June, 1961, Atramef S.P.R.L. of Antwerp made two shipments of galvanized steel sheets from Antwerp, Belgium to G. Koenigsberger & Cia. of Guatemala Ciudad to be delivered at Puerto Barrios on the east coast of Guatemala. The shipments were carried aboard petitioner's French flag vessels, the *SS Ogna* and the *SS Fort Saint Louis* under petitioner's bills of lading, copies of which were attached to respondent's complaint, stating the terms of the contracts of carriage in the French language, including provisions (Rule 15 and Article 17) contended

by petitioner to be valid under the laws of the places of contracting and of performance, that any disputes must be presented to "le Tribunale de Commerce de la Seine" (commercial court of the Seine). The respondent, a New Zealand corporation, insured the shipments and, by claimed right of subrogation to the Guatemalan consignee, on July 3, 1962, commenced an action in the San Francisco Superior Court against petitioner claiming that the shipments had suffered rust damage to the extent of $7,300 through breach of obligations assumed by petitioner under its contracts of carriage.

On October 15, 1962, petitioner timely moved the San Francisco Superior Court to dismiss respondent's complaint on the ground of *forum non conveniens*. There and at all later stages, petitioner urged that the doctrine of *forum non conveniens* as applied in maritime contract cases by the federal courts required dismissal of this case between aliens, having no United States contacts or witnesses and not involving American law or any interests of the United States or its citizens. Before all courts below, petitioner stated its offer, in the event of dismissal, to hold open respondent's time to commence an action before a proper court. On January 8, 1963, by minute order, the San Francisco Superior Court denied petitioner's motion to dismiss and on January 24, 1963, the California District Court of Appeal, First Appellate District, denied the petition for writ of mandate which petitioner had timely filed on January 16, 1963, and thereafter on February 20, 1963, the California Supreme Court denied the petition for hearing which petitioner had timely filed on February 4, 1963.

REASONS FOR GRANTING THE WRIT

I. Whether the Doctrine of Forum Non Conveniens as Administered by the Admiralty Courts Is a Part of the Federal Maritime Law That Must Be Applied by State Courts in Maritime Cases Is an Important Question not Heretofore Decided by This Court.

A. The Doctrine of Forum Non Conveniens as Applied by the Federal Courts Would Require Dismissal of the Present Maritime Case.

The established practice of the admiralty courts is to dismiss suits between aliens where, as here, the transaction involved has no contacts with the United States and particularly where, as here, the determination of controversy depends on consideration of a foreign contract and foreign law. *Canada Malting Co. v. Patterson Co.* (1932), 285 U.S. 413; *Charter Shipping Co. v. Bowring* (1930), 218 U.S. 515; *Industria E. Comercio de Minerios, S.A. v. Nova Genuesis Societa* (4 Cir. 1962), 310 F.2d 811; *Cerro de Pasco Copper Corp. v. Knut Knutsen O.A.S.* (2 Cir. 1951), 187 F.2d 991; *United States M & S Insurance Co. v. A/S Den Norske A. Og. A. Line* (2 Cir. 1933), 65 F.2d 393; *Bickel, Forum Non Conveniens in Admiralty* (1949), 35 Cornell L.Q. 12.

Here we are not concerned with the exception to this practice relating primarily to collisions on the high seas where the determination will be "communis juris". *The Belgenland v. Jensen* (1885), 114 U.S. 355; see, *Kloeckner v. A/S Hakedal*, (2 Cir. 1954) 210 F.2d 754; *The Mandu*, (2 Cir. 1939) 102 F.2d 459.

B. State Courts Must Apply the Federal Maritime Law, Including the Doctrine of Forum Non Conveniens, in Maritime Cases.

A state court exercising jurisdiction over a maritime claim must apply the federal maritime law. *Garrett v.*

Moore-McCormack Co., Inc. (1942), 317 U.S. 239. And it may not, by the application of state law or standards, "deprive a person of any substantial admiralty rights as defined ... by interpretive decisions of this court." *Pope and Talbot, Inc. v. Hawn* (1953), 346 U.S. 406, 410.

The practice of the federal courts in maritime cases which requires dismissal in the circumstances here presented, substantially affects the rights of the litigants and the outcome of the litigation, and must be regarded as a substantive rather than merely a procedural part of the maritime law. *Accord, Garrett v. Moore-McCormack Co., Inc.* (1942), 317 U.S. 239; *Guaranty Trust Co. of New York v. York* (1945), 326 U.S. 99.

C. Importance of Question.

In *SS Monrosa v. Carbon Black Export, Inc.* (1959), 359 U.S. 180, this Court expressly noted the importance of announcing guides for applying the doctrine of *forum non conveniens* in maritime cases, particularly in cases such as the present one where the maritime contract contains a forum clause. This case, unlike that involving the SS Monrosa, is a meaningful litigation presenting none of the deficiencies as a vehicle of decision which were presented by the *SS Monrosa* case.

A proper regard for the sensibilities and interests of other nationals and nations so frequently concerned in maritime litigation, requires that our courts, including our state courts, be as reluctant to impose their jurisdiction in cases where there is no United States contact as they are to force American substantive law on aliens in cases having predominately foreign contacts. See *Lauritzen v. Larsen* (1953), 345 U.S. 571.

II. The Failure of the California District Court of Appeal to Require the San Francisco Superior Court to Dismiss This Action Between Alien Corporations Regarding Maritime Transactions Having no Contacts with the United States Was Clearly Erroneous.

A. California is an Inconvenient and Inappropriate Forum for the Conduct of This Litigation.

No aspect of the shipments in question contacted California and no witnesses are located there. Permitting the California courts to retain this case will effectively deny Petitioner the opportunity to present its defense against respondent's claim on the merits,—solely by reason of the burdensome expense forced on a carrier required to defend in a, to it, foreign and inconvenient forum.

B. The Parties to the Contracts of Carriage Agreed that Disputes Would Be Submitted to the Jurisdiction of a Court of France.

The agreement for a French forum was reasonable in the setting of the transaction: the carrying vessels were of French registry and members of their crews are most readily available in France; the contracts of carriage were between a French carrier and a Belgian shipper; the laws of France and Belgium (and also of Guatemala) are based on the Code Napoleon so that a French court is peculiarly well fitted to apply the governing law in deciding this case. See *Müller & Co. v. Swedish American Line, Ltd.* (2 Cir. 1955), 224 F.2d 806; *Cerro de Pasco Copper Corp. v. Knut Knutsen O.A.S.* (2 Cir. 1951), 187 F.2d 991; *cf. The Belgenland v. Jensen* (1885), 114 U.S. 355, 364.

C. Petitioner Has Undertaken Before All Courts Below to Hold Open Respondent's Time for Filing Suit in Another Jurisdiction So That Dismissal of This Action Would Not Deprive Respondent of a Trial on the Merits.

This consideration may properly be given weight by a court in ruling upon a motion to dismiss on the grounds of *forum non conveniens*; see *Mitsubishi v. Kawasaki Kisen Kaisha, Ltd.*, 1960 A.M.C. 151.

CONCLUSION

A writ of certiorari should be granted in accordance with the prayer of this petition.

Dated, San Francisco, California, March 20, 1963.

Respectfully submitted,

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Attorney for Petitioner.

GRAHAM JAMES & ROLPH,
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Of Counsel.

(Appendix Follows)

APPENDIX

District Court of Appeal of the State of California
In and for the First Appellate District

Division Two—No. 21118

Filed Dist. Court of Appeal - First Dist. Jan 24 1963

Lawrence R. Elkington, Clerk

FRENCH LINE, a corporation,
Petitioner,

vs.

SUPERIOR COURT OF THE CITY AND COUNTY OF SAN FRANCISCO,
Respondent.

By the Court:

The petition for a writ of mandate is denied.

Dated Jan 24 1963

KAUFMAN, P. J.